

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL EDWARD STAHL,

Defendant-Appellant.

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UNPUBLISHED

January 18, 2002

No. 232440

Macomb Circuit Court

LC No. 96-003219-FH

Before: Hood, P.J., and Murphy and Markey, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted the court cost and attorney fee provisions of the trial court's order revoking his probation and sentencing him to prison for 3 to 7-1/2 years. We affirm in part, reverse in part, and remand for further proceedings.

Defendant argues that the trial court erred by ordering that he have continuing liability for the costs and attorney fees imposed as a condition of his probation, and that the trial court erred in imposing new court costs and responsibility for attorney fees associated with the probation violation proceedings. Defendant does not specifically challenge his liability for the court-ordered crime victim's rights fund fee of \$60. This fee is authorized by MCL 780.905(1) on conviction of a felony and in an order of probation. Therefore, the trial court properly ordered liability for the fee.

A trial court has the authority to impose court costs as a condition of probation. MCL 771.3. A court that revokes probation may proceed to sentence the defendant in the same manner and to the same penalty as if the sentence of probation had never been entered. MCL 771.4. However, the court may not impose costs unless the underlying statute expressly provides for them. *People v Krieger*, 202 Mich App 245, 247; 507 NW2d 749 (1993); *People v Cousins*, 196 Mich App 715, 716; 493 NW2d 512 (1992).

Defendant was convicted of receiving, possessing, or concealing stolen property over \$100, a felony. MCL 750.535. The version of this statute in effect when the offense was committed authorized a term of imprisonment of not more than five years and/or a fine of not more than \$2,500.

Although MCL 750.535 authorized imposition of a fine of not more than \$2,500, it did not authorize costs; therefore, when the trial court sentenced defendant after revoking his

probation, it lacked the authority to continue the requirement that he pay costs, or to order the payment of new costs. *Krieger, supra* at 248. Hence, that portion of the judgment ordering payment of court costs should have been vacated by the trial court. The trial court's failure to do so was error. The prosecutor's reliance on MCL 769.1a and MCL 780.766 is misplaced because those statutes concern restitution for victims who suffered direct physical or financial harm resulting from the crime. The prosecutor fails to cite any other authority that would allow the imposition of court costs in this matter.

Defendant challenges the payment of all costs; therefore, we will address the probation oversight costs. We note that if a person is sentenced to probation, the court may order him to pay a probation oversight fee. MCL 771.3(1)(d). The *Krieger* panel held that once probation is revoked, no outstanding conditions continue to exist. *Krieger, supra* at 248. Therefore, the trial court lacked the authority to continue defendant's liability under the statute for the probation oversight costs. Moreover, defendant was no longer a "probationer" for purposes of MCL 771.3(1)(d). It is not entirely clear whether the court costs that defendant was ordered to continue to pay after his probation was revoked included probation oversight fees. To the extent the court imposed a continuing obligation to pay probation oversight costs, that requirement shall be vacated on remand.

With regard to the requirement that defendant repay expenses related to his court-appointed attorney, we conclude that, in light of defendant's agreements to be responsible for the repayment of attorney fees incurred on his behalf, and the fact that reimbursement was not made part of the judgment of sentence, the trial court did not err in requiring defendant to repay attorney fees incurred in this matter. MCR 6.005(C); *People v Nowicki*, 213 Mich App 383, 386-388; 539 NW2d 590 (1995). Defendant does not claim that he was required to reimburse the county for attorney fees as a condition of representation, nor does he claim that he is unable to pay. Defendant's argument below and on appeal simply challenges the trial court's authority to order reimbursement.

In sum, we affirm the provision requiring defendant to repay attorney fees, but reverse and vacate the trial court's order to the extent it requires defendant to pay court costs and probation supervision fees. We remand for entry of an amended judgment in conformity with this opinion.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Harold Hood  
/s/ William B. Murphy  
/s/ Jane E. Markey